

Hand-7

25X1

LS 10327 a
20 July 1955

MEMORANDUM FOR: Chief, FE

SUBJECT: [] - Reimbursement for Travel Expenses
of Daughter

REFERENCE: (a) [] 23 November 1954

(b) Travel Order, [] 22 April 1953

1. Reference dispatch was brought to the attention of this Office by [] who provided additional factual information, partially at variance with that set forth in the dispatch.

2. As detailed by [] the facts are these. [] is divorced from his wife. The decree requires that he contribute to his daughter's support; her custody is vested in his ex-wife, with the provision that he is to have custody for a minimum of two months each year, the timing and duration of such custody to be determined by the mother. When [] was ordered PCS from Washington to [] in May 1953, his former wife and daughter were in Kansas City, and the mother had agreed to relinquish custody of the daughter so that she might accompany [] to remain with him for an unspecified period. Consequently, [] requested and was issued travel orders authorizing his daughter's transportation from Kansas City to []. When he was ready to pick up his daughter at Kansas City, he found that his former wife had changed her mind and refused to relinquish custody, so he proceeded to [] alone. Subsequently the mother and daughter went to [] on private business. The mother then agreed to release the daughter to [] custody and permitted her to proceed to [] for an indefinite stay. [] claims reimbursement for his daughter's one-way passage from [] in September 1953. About one month after the daughter reached [] the mother again changed her mind and reclaimed custody. [] returned the girl to [] at his personal expense. At the time of travel, she was nine years old.

OGC

FOIAB5

4. Had she traveled from Kansas City as was originally planned, the entitlement would be equally valid. [] 4 October 1945, states: "Members of an employee's household ordinarily are those dependent upon and residing with the employee. Temporary absence from

- 2 -

home for the purpose of attending school, visiting, or like temporary purposes -- at the time of the transfer of the employee -- does not have the effect of removing such individuals from consideration as members of the employee's household." There is room for reasonable difference of opinion in making the administrative determination as to whether a given absence is "temporary" but, in the instant case, it is clear that the daughter was a member of [] household at any time that the mother was willing to relinquish custody and he was willing to accept it, that the initial step in this sequence of events was outside of his control, and that during the period involved he intended his daughter to be a member of his household subject only to her mother's concurrence. [] section 7(a), "Newly Acquired Families" would seem relevant here.

"When an employee acquires additional dependents (through birth, marriage, legal adoption, or changes in dependency) subsequent to the issuance of a travel authorization but before the expiration of the time limitation, travel expenses and per diem for such additional dependents shall be allowable under the travel authorization in the absence of any specifically stated limitation." (Emphasis supplied)

5. We perceive no difference in the situation as it actually developed, where the mother relinquished custody while in [] and the child was brought from [] by the employee. It was throughout the intent of [] to accept custody of his daughter and to consider her as a member of his household whenever the mother relinquished custody which, while in [] she finally did. The requisite change in dependency was effected and section 7(a) of [] applicable.

6. Although the travel performed was between [] and the travel order authorized travel of the daughter from Kansas City [] such variation is permissible under [] section 5(a), "Itinerary Changes", which permits variation in itinerary without amendment of the travel order provided only that the actual cost claimed shall not exceed the constructive cost authorized.

7. That the daughter remained in [] only a month and was then returned to the mother in [] at no expense to the Government, is irrelevant. It was [] stated intention throughout to keep the child in his household so long as he should remain in [] The mother's determination that she desired to reassert her rights to custody was a matter as much out of [] control as though, for example, the child had become ill and required special medical service which could not be obtained in []

- 3 -

8. It is the opinion of this Office that if the claim is otherwise in order and if the proper administrative officials are satisfied of the accuracy of the facts as stated by there is no legal objection to its payment.

25X1

25X1

9. The references are returned herewith.

Office of General Counsel

25X1

Attachments - 3

OGC:RFB:ml
subject
signer
chrono
vital
legal